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Sterling Packaging Corporation and Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-0326, AFL-CIO, CLC. Case 6-CA-32228

June 28, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on August 10, 2001, the General Counsel issued the complaint on November 20, 2001, against Sterling Packaging Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 9, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On January 10, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 6, 2001, notified the Respondent that unless an answer was received by the third business day following receipt of the reminder letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Jonestown, Pennsylvania, has been engaged in the manufacture and non-retail sale of paperboard boxes. During the 12-month

period ending July 31, 2001, the Respondent, in conducting its business operations, sold and shipped from its Jonestown, Pennsylvania facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania, and purchased and received at its Jonestown, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Stanley Ruskin	Chief Executive Officer
Bernard Sarsfield	Vice President, Corporate Operations
Annette Camuso	Senior Director, Human Resources & Administration

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All production and maintenance employees, including plant clerical employees, truckmen and non-supervisory group leaders employed by the Employer at its Jonestown, Pennsylvania, facility; excluding office clerical employees, salesmen, firemen-watchmen, samplemakers, Quality Control Inspectors and guards, professional employees and supervisors as defined in the National Labor Relations Act.

Since about 1974, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 21, 2000, to April 20, 2002.

At all times since about 1974, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about June 4, 2001, the Respondent and the Union entered into a Plant Shutdown Agreement, which superseded and terminated the collective-bargaining agreement. On about that same date, pursuant to paragraph 3 of the Plant Shutdown Agreement, the Respondent agreed to make vacation pay payments to unit employees

as specified in the agreement. On about July 13, 2001, the Respondent, by Camuso, informed the Union that it would not pay the vacation pay obligation.

Since about July 13, 2001, the Respondent has failed and refused to make vacation payments to its employees as required by the Plant Shutdown Agreement.

By its actions described above, the Respondent has repudiated the Plant Shutdown Agreement. The Respondent engaged in the conduct described above without the Union's consent. The terms and conditions of employment embodied in the agreement are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By failing and refusing to make required vacation payments to its employees as required by the Plant Shutdown Agreement, and by its action, repudiating the Plant Shutdown Agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing and refusing to make the vacation payments to its employees as required by the Plant Shutdown Agreement, and by its action, repudiating the Plant Shutdown Agreement, we shall order the Respondent to honor the terms and conditions of the Plant Shutdown Agreement and make whole its employees for all contractually required vacation payments, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Sterling Packaging Corporation, Jonestown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating its June 4, 2001 Plant Shutdown Agreement with the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-0326, AFL-CIO, CLC, by failing and refusing to make the required vacation payments to the employees in the following unit:

All production and maintenance employees, including plant clerical employees, truckmen and non-supervisory group leaders employed by the Employer at its Jonestown,

Pennsylvania, facility; excluding office clerical employees, salesmen, firemen-watchmen, sampl makers, Quality Control Inspectors and guards, professional employees and supervisors as defined in the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of the June 4, 2001 Plant Shutdown Agreement and make whole its employees for all contractually required vacation payments that have not been made since July 13, 2001, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of vacation pay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Jonestown, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 13, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. June 28, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT repudiate our June 4, 2001 Plant Shutdown Agreement with the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 20326, AFL-CIO, CLC, by failing and refusing to make the required vacation payments to the employees in the following unit:

All production and maintenance employees, including plant clerical employees, truckmen and non-supervisory group leaders employed by us at our Jones-town, Pennsylvania, facility; excluding office clerical employees, salesmen, firemen-watchmen, samplemakers, Quality Control Inspectors and guards, professional employees and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of the June 4, 2001 Plant Shutdown Agreement and make whole our employees for all contractually required vacation payments that have not been made since July 13, 2001, with interest.

STERLING PACKAGING CORPORATION